No. 31015/1/2018-Pricing
GOVERNMENT OF INDIA
MINISTRY OF CHEMICALS & FERTILIZERS
DEPARTMENT OF PHARMACEUTICALS
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A- Wing, Shastri Bhawan,
New Delhi 110 001

Order

1. This is an order on an application, dated 02.01.2018, filed under paragraph 31 of the Drugs (Prices Control) Order, 2013 (hereinafter called the DPCO) by M/s Sanofi India Limited (hereinafter called the applicant) against notification S.O. No.3946(E), dated 20.12.2017 issued by the National Pharmaceutical Pricing Authority (hereinafter called the NPPA) fixing the ceiling price of "Amaryl MV 1mg tablet (containing Glimepiride 1mg+Metformin 500mg+Voglibose 0.2mg) and Amaryl MV 2mg tablet (containing Glimepiride 2mg+Metformin 500mg+Voglibose 0.2mg)". The notification SO 3946(E), dated 20.12.2017 was issued in supersession of SO 3727(E), dated 23.11.2017, against which company earlier filed review application, dated 5.12.2017 for the same formulations.

2. The applicant has contended as under:-

2.1 The retail price of company's products Amaryl MV 1 mg tablet (containing Voglibose 0.2mg + Metformin 500mg + Glimepiride 1 mg) and Amaryl MV 2 mg tablet (containing Voglibose 0.2mg + Metformin 500mg + Glimepiride 2 mg) is covered under this notification (Sl. No. 4 and Sl No. 7 of the Table respectively). The retail price per tablet has been fixed and notified by NPPA at Rs 6.85 and Rs 8.68 respectively.

2.2 Company submitted that NPPA has erred in fixing the retail price of their products under brand names Amaryl MV 1 mg and Amaryl MV 2 mg under Para 5 and 15 of the DPCO 2013 by wrongly considering that these formulations are covered under the definition of "New Drug" as given in Para 2(u) of the said DPCO. It is submitted that NPPA has no power under DPCO 2013 to fix the retail price of a formulation under Para 5 suo-motu. Para15 of the DPCO 2013 prescribes the procedure for fixation of retail price of a new drug for existing manufacturers of scheduled formulations. Para 15(2) stipulates that where an existing manufacturer of a drug with dosages and strengths as specified in National List of Essential Medicines launches a new drug, such existing manufacturers shall apply for prior price approval of such new drug from the Government in Form-I specified under Schedule-II of this Order which makes it very clear that price approval from NPPA is required to be taken by an existing manufacturer of a scheduled formulation when he launches a formulation combining the same with any other drug either listed or not listed in the NLEM. As Amaryl MV 1mg and 2mg do not fall under the definition of 'new drug' under 2(u) of DPCO, 2013, the company was not required to apply for price fixation and have, therefore, never applied for such fixation by submitting Form I.

2.3 The price fixation of Amaryl MV tablets (Glimepiride 1/2mg+Metformin 500mg+ Voglibose 0.2mg) notified vide SO 3946(E) dated 20/12/2017 is not in consonance with para 2(u) and Para 5 & 15 of the DPCO 2013.

2.4 The formulations Amaryl MV 1 mg and Amaryl MV 2mg had been launched by company in Jan 2015. This combination is approved by State FDA, Uttarakhand and is manufactured under valid manufacturing licence. Company gave the details of the composition of each of the above product:

Formulation	Composition
Amaryl MV 1 mg Tablets	Each uncoated bilayered tablet contains Metformin Hydrochloride IP 500 mg (in sustained release form) Glimepiride IP 1 mg Voglibose IP 0.2 mg
Amaryl MV 2 mg Tablets	Each uncoated bilayered tablet contains Metformin Hydrochloride IP 500 mg (in sustained release form) Glimepiride IP 2 mg Voglibose IP 0.2 mg

2.5 At the time of launch and marketing of these brands/formulations in January 2015, none of the ingredients (namely Metformin Hydrochloride 500 mg in sustained release form or Glimepiride 1mg or 2mg or Voglibose 0.2mg) of Amaryl MV were included in Schedule I.

2.6 As per Para 2 (u) of DPCO, 2013, "new drug" for the purposes of this Order shall mean a formulation launched by an existing manufacturer of a drug of specified dosages and strengths as listed in the National List of Essential Medicines by combining the drug with another drug either listed or not listed in the National List of Essential Medicines or a formulation launched by changing the strength or dosages or both of the same drug of specified dosages and strengths as listed in the National List of Essential Medicines.

2.7 The table given below indicates the status of the Scheduled/Non-Scheduled category in respect of each of the molecule contained in company's products Amaryl MV 1 mg and 2 mg tablets in DPCO, 2013

	Tablets containing	NLEM 2011 (15.5.2013 to 9.3.2016	NLEM 2015 (10.3.2016 onwards)
1	Glimpepiride 1mg	No	Yes
2	Glimpepiride 2mg	No	Yes
3	Metformin 500 mg	Yes	Yes
4	Metformin 500 mg (Controlled Release) (Also known as Sustained Release or Prolonged Release or Extended Release)	**No**	**Yes**
5	Metformin 1000 mg	No	Yes
6	Metformin 1000 mg (Controlled Release) (Also known as Sustained Release or Prolonged Release or Extended Release)	**No**	**Yes**
7	Voglibose	No	No

It is evident from above table that company was not an 'existing manufacturer' of 'scheduled formulation' containing any of the ingredient of Amaryl MV 1mg and 2mg and as such were not required to take price approval of NPPA under Para 15(2) of the DPCO 2013.

2.8 The plain Metformin tablets and the Metformin CR/XR tablets cannot be taken as one and the same as is obvious from the following:

a. Indian Pharmacopeia 2014 contains separate monographs for Metformin Tablets and Metformin Prolonged Release Tablets. This makes it clear that these are separate products.

b. Office Memorandum OM NO X11035/9/2013-DFQC dated 6th December 2013 issued by Ministry of Health and Family Welfare, Government of India clarifies that "Conventional forms of drug like Tablet/Capsules/Injection of that particular drug as mentioned in NLEM 2011 shall be considered as part of NLEM 2011 and not the dosage forms like modified release forms, dispersible, effervescent, soluble , enteric coated, lipid suspension, liposomal of the drug, unless these drugs are specified in non-conventional dosage forms in NLEM-2011."

c. The entry pertaining to Metformin in NLEM 2011 and NLEM 2015 are as follows:-

NLEM 2011(15.5.2013 to 9.3.2016)	18.5.1	Metformin 500 mg Tablets
NLEM 2015(10.3.2016 onwards)	21.4.1.4	Metformin Tablets 500mg, 750mg, 1000mg (Immediate and Controlled Release)

2.9 Thus, it is abundantly clear that Metformin 500 mg (Controlled Release) was added in Schedule I only on 10.3.2016 and was not a Scheduled Formulation till 9.3.2016, as wrongly might have been considered by the NPPA. Moreover, when Amaryl MV was launched, the company was also not manufacturing any other product containing any of the above molecules of the strength and delivery system specified in Schedule I.

2.10 It is also pertinent to note that in NLEM 2011 and Schedule I as it existed between 15.5.2013 and 9.3.2016, in Section 12.3 Nifedipine shows a separate line for tablets, capsules and sustained release tablets and capsules. This clearly means that whenever Government intended to cover sustained release tablets under Schedule I, they specifically and unambiguously made a separate entry for sustained release tablets under the relevant molecule. As the entry for Metformin does not show sustained release tablets, it is very clear that Metformin sustained release was not part of Schedule I between 15.5.2013 and 9.3.2016

2.11 In view of the position stated above, the company submitted that the retail price of company's brands Amaryl MV 1 mg and Amaryl MV 2 mg tablets cannot be fixed under para 5 read with para 15 of DPCO 2013 as these tablets/formulations do not fall under the definition of 'new drug' as given in para 2 (u) of DPCO, 2013. There is thus

no justification for price fixation of retail price of Amaryl MV tablets (Glimepiride 1/2mg+Metformin 500mg+ Voglibose 0.2mg) notified vide S.O. 3946(E) dated 20/12/2017 in the manner as adopted by the NPPA and thus may be withdrawn immediately.

2.12 Without prejudice to the submissions as above, company confirmed that as required under para 31, they have implemented the retail price notified under SO 3946(E) dated 20.12.2017 before filing the Review Application. Company also submitted the relevant Form V IPDMS Ref 15978.

3. Comments of NPPA:

3.1 Retail price (post - GST) of Amaryl MV Tablets (Glimpride 1/2 mg + Metformin 500 mg + Voglibose 0.2 mg) as Rs. 6.85/8.68 per tablet as per para 5, 11, and 15, of Drugs (prices control) order 2013.

3.2 The company has stated that correct methodology was not followed in arriving at the Retail price of Amaryl MV Tablets (Glimpride 1/2 mg + Metformin 500 mg + Voglibose 0.2 mg)**.** The points raised by the company are not relevant. Price fixation has been done strictly in accordance with the provisions of DPCO, 2013. Details are as follows:**-**

Company's Grievances	NPPA's comments
Company stated that NPPA has erred in fixing the retailed price of their products under brand names Amaryl MV 1 and Amaryl MV 2 mg under para 5 and 15 of DPCO, 2013 by considering that these formulations are covered under the definition of "New Drug" as given in para 2 (u) of the said DPCO. Company opined that NPPA has no power under DPCO, 2013 to fix the retail price of a formulation under para 5 suo-motu. Para 15 of DPCO, 2013 prescribes the procedure for fixation of retail price of New Drug for existing manufacturers of scheduled formulations. Para 15 stipulates that where an existing manufacturers of a drug with dosage and strengths as specified in National list of essentials medicines launches a New Drug, such existing manufacturers shall apply for prior price approval of such new drug from the government in Form-1 specified under schedule -II of this order, which makes its very clear that price approval from NPPA is required to be taken by an existing manufacture of a schedule formulation when he launches a formulation combining the same with any other drug either listed or nor listed in NLEM. As	NPPA fixed the Retail price (Post - GST) of Amaryl MV Tablets (Glimpride 1/2 mg + Metformin 500 mg + Voglibose 0.2 mg) as Rs. 6.85/8.68 per tablet as per the decision of 51st Authority meeting held on 20.12.2017. S. O. 3946(E) dated 20.12.2017 is the supersession of S.O. 3727(E) dated 23.11.2017 (except item of Sl. No. 1 & 2). Since, under NLEM, 2011 of Metformin 500 mg tablet was included without differentiating it's other variants therefore, all variants i.e. CR/SR/extended release are considered as included. Hence, the contents of the company that Metformin 500 mg tablet in sustained release form is not included under NLEM, 2011 is not tenable. Therefore, Amaryl MV 1 and Amaryl MV 2 mg tablet fall under the category of New Drug 2(U) of DPCO, 2013 and it was mandatory for company to get price approval from NPPA before

amaryl MV1 and amaryl MV 2 mg do not fall under the definition of “New Drug” under 2(u) of DPCO, 2013, company were not required to apply for price fixation by submitting Form -1. Company also stated that Amaryl MV Tablets (Glimpride 1/2 mg + Metformin 500 mg + Voglibose 0.2 mg) had been launched by them in Jan, 2015 and enclosed copy of invoice in support of their claim. They have also stated that subject combination was approved by state FDA on 21.08.2014. company reiterated that at the time of launch and marketing of amaryl MV1 and amaryl MV 2 mg tablet in Jan, 2015, none of the ingredients of the subject formulation (i.e. Metformin Hydrocloride 500 mg in sustain release form or Glimpride 1 mg and 2 mg or Voglibose 0.2 mg) were included in schedule 1 of DPCO, 2013.	manufacturing/marketing of subject formulation. Launching Amaryl MV1 and amaryl MV 2 mg by the company in January, 2015 without price approval is violation of DPCO, 2013 provisions and attracts the provisions of overcharging.
Company has pointed out that Glimpride 1 mg, 2 mg, Metformin 500 mg SR and Metformin 100 mg was included in NLEM, 2015 on 10.03.2016. According to company plain Metformin tablet and Metformin CR/XR cannot be taken as one and the same. Company also mentioned I.P. 2014 monograph and O.M. No. X11035/9/2013-DFQC dated 6th Dec, 2013 issued by Ministry of Health & Family Welfare in support of their claim. Company is also of the opinion that Metformin 500 mg (control release) was not a schedule formulation till 09.03.2016. They also referred the issue of Nifedipine sustained release tablet. In view of the position stated above, it is submitted that the Retail price of their brand Amaryl MV 1 mg and Amaryl MV 2 mg tablets cannot be fixed under para 5 read with para 15 of DPCO, 2013 as the tablets/formulations do not fall under the definition of “New Drug” as given in para 2 (u) of DPCO, 2013.	Reference is invited to review order No. 1- 31015/12/2014 –PI-I dated 30.08.2016 No. 2- 31015/17/2017 –Pricing dated 14.06.2017 No. 3- 31015/57/2017 –Pricing dated 01.01.2018 Wherein department has rejected such cases.

4. During the personal hearing the representatives of the company submitted that Amaryl MV 1mg and 2mg were launched in January 2015.

4.1 Its composition of Amaryl MV is as follows

a. Amaryl MV 1 mg – i. Glimepiride IP 1 mg ii Voglibose IP 0.2 mg iii Metformin Hydrochloride IP Sustained Release 500 mg
b. Amaryl MV 2 mg – i. Glimepiride IP 2 mg ii Voglibose IP 0.2 mg iii Metformin Hydrochloride IP Sustained Release 500 mg

Note – Sustained Release Tables are also known as Controlled Release, Prolonged Release and Extended Release Tablets.

4.2 None of the above ingredient of Amaryl MV (namely Metformin Hydrochloride 500 mg in sustained release form or Glimepiride 1mg or 2mg or Voglibose 0.2mg) were included in Schedule I as on Jan 2015.

4.3 Glimepiride was not in NLEM 2011 and hence was not included in Schedule I as on Jan 2015. Voglibose was not in NLEM 2011 or NLEM 2015 was never included Schedule I.

4.4 Metformin Immediate Release and Metformin sustained release are different and have separate entries in Indian Pharmacopeia and require separate manufacturing licences (refer separate Monograph for Metformin Tablets and Metformin Sustained Release or Prolonged Release tablets in the Indian Pharmacopeia attached with Review Application)

4.5 Metformin in listed in Schedule I in 2013 as follows

Section 18.5.1 Metformin PST Tablets 500 mg

This includes only immediate release tablets of Metformin 500 mg and Company was not manufacturing this product.

Metformin Sustained Release Tablets were not part of NLEM 2011 and were not listed in Schedule I as on Jan 2015

This can be understood easily if the entries for Nifedipine in Section 12.3 are seen, where it is listed as follows

Section 12.3	Nifedipine	ST	Capsules	5mg, 10 mg
			Tablets	10mg, 20mg
			Sustained Release Tablets or Capsules	10mg, 20mg

This clearly means that whenever Government intended to cover Sustained Release under NLEM or Schedule I, they have specifically done so by making a separate listing for Sustained Release forms as in the same as in the case of Nifedpine, and for those molecules where Sustained Release forms are not so listed, only conventional forms of the drugs as mentioned in the Schedule I are

covered and innovative products like sustained release are not covered in Schedule I.

4.6 The above was clarified by Ministry of Health and Family Welfare (MoH) vide their Office Memorandum X 11035/9/2013 –DFQC dated 6th December, 2013 in reply to Department of Pharmaceuticals Communication dated 27.9.2013 as follows

"Point No 1. Conventional forms of a drug like tablet/capsule/injection of that particular drug as mentioned in NLEM 2011 shall be considered as part of NLEM 2011 and not the dosage forms like modified release forms, dispersible, effervescent, soluble, enteric coated, lipid suspension/liposomal of the drug unless these drugs are specified in non-conventional dosage forms in NLEM 2011"

NPPA is bound to follow the contents of the above office memorandum dated 6th Dec 2013 and cannot arbitrarily treat Metformin Sustained Release as a Scheduled Formulation as on January 2015.

4.7 Thus it is absolutely clear that Metformin sustained Release was not under NLEM 2011 and was not part of Schedule I as on Jan 2015 when Amaryl MV 1mg and 2 mg were launched.

4.8 It is also pertinent to note that Schedule I, after amendment on 10.3.2016 (based on NLEM 2015) reads as follows

21.4.1.4 Metformin Tablets 500mg, 750mg, 1000mg (Immediate and Controlled Release)

This clearly shows that Metformin Sustained Release 500 mg became a Scheduled formulation only after 10.3.2016 when NLEM 2015 was incorporated in Schedule I

4.9 Thus upto 9.3.2016, Metformin Tablets Immediate Release was in Schedule I but not Metformin Tablets Sustained Release, while after 10.3.2016 both Metformin Immediate Release and Sustained Release were in Schedule I.

4.10 NPPA in their reply has quoted 3 Review Orders

31015/12/2014 dated 30.8.2016

This refers to a case where Gelatin coated capsules are technologically different and deserve a separate ceiling price and it was concluded that there is no provision in DPCO for treating Gelatine coated capsules differently

31015/17/2017 dated 14.6.2017

This refers to case where the question was whether soft gelatin capsules are subject to price control and it was concluded that there is no provision in DPCO to consider gelatin coating separately

Thus, none of the above Review Orders are relevant in this case and has no bearing on the decision for this review

31015/57/2017 dated 01.01.2018

In this case the tablet was partly immediate release and partly sustained release and it was concluded that as the product is not 100% sustained release, there was no provision for a separate price.
It may be noted that Metformin Sustained Release 500 mg included in Amaryl MV 1mg and 2mg is 100% sustained release. This Review order actually re-inforces our contention.

4.11 As Amaryl MV was **not** a 'new drug' under para 2(u), Company was not required to and had not applied for price fixation of new drug under para 15 (2) and NPPA has wrongly fixed the price of Amaryl MV vide notification 3727 dated 23.11.2017 and 3946 dated 20.12.2017 without receiving any application from the company.

4.12 Before fixing the retail price, NPPA did not even put up the working sheet showing the calculation of Retail Price and giving an opportunity to file a representation against the proposed Retail price. Further prices were fixed on 23rd Nov 2017 and again re-fixed on 20th Dec 2017 excl GST. This has led to avoidable loss of implementing two price reduction within a gap of just 1 month.

4.13 Arbitrary fixing of prices based on incorrect reading of Schedule I and ignoring Ministry of Health office memorandum of 6th December 2013 should be set aside

4.14 In view of the above, the company requested the Government to set aside the prices for Amaryl MV notified by NPPA under the notification 3727 dated 23.11.2017 and 3946 dated 20.12.2017 and permit the Company to sell the same at price prevalent before 23.11.2017.

5. NPPA, in reply, stated that in the ceiling price fixation of Metformin 500mg tablet under NLEM 2011 vide SO. 1814(E) dated 21.6.2013, also considered the different variants of Metformin 500 mg tablet.

6. Examination:

6.1 The present review matter pertains to the difference in interpretation of the definition of "New Drug" under para 2(u) of the DPCO, 2013. NPPA notified the prices of Amaryl MV 1 mg (containing Glimepiride 1mg+Metformin 500mg+Voglibose 0.2mg) and Amaryl MV 2mg (containing Glimepiride 2mg+Metformin 500mg+Voglibose 0.2mg) by considering these formulations as included in the Schedule of NLEM 2011. On the other hand, M/s Sanofi India Limited have contended that sustained release formulation of Metformin has been included only in NLEM 2015.

6.2 The ground of this contention of the applicant is that both of these formulations, being in the nature of sustained release formulations, did not qualify to be covered under the relevant Metformin 500mg tablet formulations because –

i. The sustained release formulations are different from the conventional formulation of Metformin, already included in the Schedule to the DPCO, 2013.
ii. Considering the sustained release formulation as different from the conventional Metformin formulations, the Schedule to the NLEM, 2015 has separately included the sustained release formulations; and
iii. The CDSCO clarification issued on 6th December, 2013 acknowledging the existence of sustained release formulations as different from their conventional counterparts.

6.3 The NPPA has clarified that all formulations with or without sustained release properties are treated as covered under the corresponding formulation containing the same API and any new variant of the same API with different delivery systems need to be treated as covered under the Schedule to the DPCO 2013 as well. Accordingly, the NPPA's contention, about treating Amaryl MV 1mg and Amaryl MV 2mg as the variants of the Metformin 500mg tablet formulations covered under Schedule to the DPCO, 2013, deserve consideration.

6.4 The Ministry of Health & Family Welfare, vide its letter dated 6th December, 2013 opined that different dosage forms need not be treated as covered under NLEM unless such dosage forms are specifically included in the relevant NLEM. The opinion of Ministry of H&FW was deliberated at high level. It was decided that it is necessary to recognize that the NLEM prepared by the Ministry of Health & Family Welfare is primarily not for the purpose of price control and hence has to be read in conjunction of other relevant provisions of DPCO, 2013, failing which it can be easily misused by drug manufacturers to circumvent or escape from the DPCO, 2013, which should not be allowed. As per DPCO, 2013, a manufacturer of a new drug as defined under the DPCO, 2013 is allowed to seek a separate price by making necessary application under para 15(2). In the case of new drug involving a new delivery system developed through indigenous research and development, the manufacturer can seek a 5 year exemption from price control under para 32(iii) following due procedure. Beyond these provisions, there is no other way in which a drug manufacturer can seek a price approval or exemption from price control for novel delivery systems/innovative dosage forms of the scheduled formulations.

6.5 The current DPCO, issued in pursuance to the NPPP 2012, relies upon the 'market prices of the relevant formulations' in contrast to the earlier practice of 'cost based pricing'. As such, the market prices of different dosage forms, relevant for any NLEM, have already been taken into consideration during the exercise of fixation of Ceiling Prices of various NLEMs. Therefore, to exempt any dosage form of any NLEM (intended for same therapeutic indication) will defeat the purpose and sanctity of the pricing mechanism under DPCO.

6.6 The premise of the NLEMs essentially revolves around the therapeutic relevance of various formulations irrespective of their delivery systems. Mere inclusion of any additional delivery system in the NLEM (without any variation in the therapeutic category or indications), in addition to the hitherto included type of formulation, does not

necessarily prove that the relevant additional category of delivery system, was not covered in the NLEM. Such additional entry of a different delivery system, may at best be treated as extension of the Schedule, more as a clarificatory exercise, instead of interpreting it as inclusion of any additional drug or molecule.

6.7 In view of the above, the contention of the applicant is devoid of any genuine basis for questioning the approach followed by NPPA while fixing the retail prices of formulations Amaryl MV 1 mg (containing Glimepiride 1mg+Metformin 500mg+Voglibose 0.2mg) and Amaryl MV 2mg (containing Glimepiride 2mg+Metformin 500mg+Voglibose 0.2mg) by treating them as new drug under para 2(u) of DPCO, 2013. Therefore, the review application is liable to be rejected.

7. Decision:

"The contention of the applicant, relied upon in their Review Application, is devoid of any genuine basis for questioning the approach followed by NPPA while fixing the prices of Amaryl MV 1 mg (containing Glimepiride 1mg+Metformin 500mg+Voglibose 0.2mg) and Amaryl MV 2mg (containing Glimepiride 2mg+Metformin 500mg+Voglibose 0.2mg) by treating them new drug under para 2(u) of DPCO, 2013. Therefore, the review application stands rejected."

Issued on this date, the 2nd day of July, 2018.

(M.K. Bhardwaj)
Deputy Secretary
For and on behalf of the President of India

Copy to :-

1. M/s. Sanofi India Limited, Sanofi House, CTS No.117-B, L&T Business Park, Saki Vihar Road, Powai, Mumbai-400 072.
2. The Member Secretary, National Pharmaceutical Pricing Authority, YMCA Cultural Centre Building, New Delhi-110001

3. PS to Hon'ble Minister (C&F), Shastri Bhawan, New Delhi for information.
4. PS to MoS (C&F), Shastri Bhawan, New Delhi for information.
5. PSO to Secretary (Pharma), Shastri Bhawan, New Delhi for information.
6. T.D., NIC for uploading the order on Department's Website